In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-876

JESUS CONTRERAS, LOUIS HERRERA, GUADALUPE MONTANA, and FIDEL VALDEZ, individually and as representatives of a class consisting of all those similarly situated,

Plaintiffs and Petitioners,

vs.

GROWER SHIPPER VEGETABLE ASSOCIATION OF CENTRAL CALIFORNIA, an unincorporated association, et al.,

Defendants and Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief in Opposition for Defendants and Respondents Bud Antle, Inc. and Robert V. Antle

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Brief in Opposition for Defendants and Respondents Bud Antle, Inc. and Robert V. Antle

Defendants and respondents BUD ANTLE, INC. and ROBERT V. ANTLE herewith respond to the petition for writ of certiorari heretofore filed with this Court and respectfully pray that the application for writ of certiorari be denied.

QUESTION PRESENTED

The question presented by the petition is whether all the agricultural employees employed since 1966 in the growing, harvesting and packing of iceberg lettuce have standing under the anti-trust laws of the United States to sue certain growers, shippers, and packers of iceberg lettuce for damages because of work claimed to have been lost when the respondents allegedly engaged in a conspiracy to fix prices for iceberg lettuce by, among other means, limiting production of lettuce.

STATEMENT OF CASE

On April 8, 1971, the Honorable Alfonso J. Zirpoli of the United States District Court for the Northern District of California granted respondents' motion to dismiss petitioners' complaint. The motion was granted for the reason that the petitioners were not within the "target area" of the alleged price fixing conspiracy and therefore lacked the requisite standing to sue for damages under Section 4 of the Clayton Act (15 U.S.C. § 15). (R. 264)[1] On appeal by petitioners to the Court of Appeals for the Ninth Circuit, the Court of Appeals affirmed the judgment and order of the trial court. Copies of the opinions of the Court of Appeals and of the District Court are attached to the petition as Appendix A and Appendix B, respectively.

By way of petitioners' complaint, petitioners claim to be agricultural employees engaged in the growing, harvesting and processing of iceberg lettuce. (R. 2, lines 21-4.) *Petitioners do not allege that they were at any time employees of any of the respondents.* Petitioners purport to bring the action, however, on behalf of *all farmworkers* who since

1. "R" references are to page numbers assigned to the record on appeal on file in the Court of Appeals below.

September 15, 1966 have been employed by respondents as farmworkers engaged in the growing, harvesting and/or processing of iceberg lettuce. (R. 3, lines 11-20.) The named respondents are alleged to grow and/or ship in excess of ninety percent (90%) of all the iceberg lettuce produced and sold in the United States. (R. 3, lines 4-5.)

On information and belief, petitioners allege that respondents and "other growers, processers and/or shippers of iceberg lettuce" *have contracted, combined and conspired in interstate trade and commerce to fix prices for iceberg lettuce at an artificially high and non-competitive price.* (R. 3, lines 29-4, line 9.) As a part of such conspiracy, petitioners further allege, again on information and belief, that respondents conspired to limit the total amount of iceberg lettuce produced and sold by them each year. (R. 4, lines 14-26.) The total amount of iceberg lettuce moving in interstate commerce was allegedly reduced, and the price of lettuce was allegedly raised to an artificially high level. (R. 4, lines 27-31.) *Yet, petitioners do not claim that as a part of such conspiracy the respondents agreed or conspired to discharge employees, to limit employment, to limit or to restrict hours worked, or to limit or to reduce wage rates, or total wages paid to any of their employees.*

Petitioners contend that they and their class were injured in their business or property in that the "work" available to petitioners and the purported class was reduced. *Petitioners, however, do not claim to have lost wages.* Petitioners claim for themselves and for their class damages in an amount not less than Eighty Million Dollars ($80,000,000), or Two Hundred Forty Million Dollars ($240,000,000), trebled. (R. 5, lines 9-17.)

Respondents duly moved to dismiss the complaint, or alternatively for summary judgment pursuant to Rule 56 F. R. C. P., on the ground that petitioners did not have

standing to prosecute the purported claim for damages. (R. 36-99 and 109-216.) In response to such motions, and after reading and considering the extensive memorandum of points and authorities and affidavits on file and after hearing the argument of counsel, the District Court granted respondents' motion to dismiss. The court did so on the ground that petitioners lacked the requisite standing to prosecute an action for damages. (R. 232-264) Petitioners appealed to the Court of Appeals for the Ninth Circuit. After the matter was thoroughly briefed on behalf of all of the parties, and after oral argument, the Court of Appeals rendered its decision on September 7, 1973, affirming the order and judgment of the trial court.

Following the Court of Appeals decision, petitioners did not petition for a rehearing pursuant to Rule 40 Federal Rules of Appellate Procedure. Nor did petitioners petition for a rehearing by the Ninth Circuit *en banc* pursuant to Rule 35 F. R. A. P.

The decision of the District Court and of the Court of Appeals for the Ninth Circuit is clear, sound and judicious, is in accordance with prior decisions of this Court, is in accordance with long standing and proper decisions of the Court of Appeals for the Ninth Circuit, and is consistent with decisions of other circuits in analogous cases. We respectfully submit that the petition for writ of certiorari should not be granted.

WHY THE PETITION FOR CERTIORARI SHOULD NOT BE GRANTED

1. The Petition Does Not Present any Issue Which Should Be Decided by This Court.

The petition does not present any issue which requires or justifies a determination by this Court at this time. The District Court and the Ninth Circuit below each concluded that under Section 4 of the Clayton Act petitioners could

not have suffered any damage "by reason of" any violation of the antitrust laws. Each court rested its conclusion upon the ground that petitioners could not have been within the "target area", as that test has been articulated by—among other circuits—the Ninth Circuit, of an alleged conspiracy to fix prices. Petitioners made no effort whatsoever to seek a rehearing either by the panel of the Ninth Circuit which rendered the decision by the Ninth Circuit *en banc* pursuant to Rules 35 and 40, Federal Rules of Appellate Procedure. Petitioners thereby have admitted that the decision of the Ninth Circuit in their case complies and is in accordance with prior applicable decisions by the Ninth Circuit.

The question presented in essence therefore is whether the courts below failed to properly construe and apply the phrase "by reason of", as that phrase appears in § 4 of the Clayton Act, in holding that petitioners did not have standing to sue for damages claimed to have arisen from the alleged price fixing conspiracy.

In the past, this Court has been confronted with almost countless petitions for certiorari claiming that the courts below have misinterpreted and misapplied this particular phrase of § 4 of the Clayton Act. (*E.g. Miley v. John Hancock Mutual Life Ins. Co.*, 148 F.Supp. 299 (D. Mass.), aff'd *per curiam* 242 F.2d 758 (1st Cir.), *cert. denied*, 355 U.S. 828 (1957); *Calderone Enterprises Corp. v. United Artists Theatre Circuit, Inc.*, 454 F.2d 1292 (2d Cir. 1971), *cert. denied*, 406 U.S. 930 (1972); *Billy Baxter, Inc. v. Coca Cola Co.*, 431 F.2d 183 (2d Cir. 1970), *cert. denied*, 401 U.S. 923 (1971); *Fields Productions, Inc. v. United Artists Corp.*, 432 F.2d 1010 (2d Cir. 1970), aff'g *per curiam*, 318 F.Supp. 87 (S.D.N.Y. 1969), *cert. denied*, 401 U.S. 949 (1971); *Kaufman v. Dreyfus Fund*, 434 F.2d 727 (3d Cir. 1970), *cert. denied*, 401 U.S. 974 (1971); *Melrose Realty Co. v. Lowe's,*

Inc., 234 F.2d 518 (3d Cir. 1956), *cert. denied*, 352 U.S. 890 (1956); *South Carolina Council of Milk Producers, Inc. v. Newton*, 360 F.2d 414 (4th Cir. 1966), *cert. denied*, 385 U.S. 934 (1966); *Volasco Products Co. v. Lloyd A. Fry Roofing Co.*, 308 F.2d 383 (6th Cir. 1962), *cert. denied*, 372 U.S. 907 (1963); *Commonwealth Edison Co. v. Allis-Chalmers Mfg., Co.*, 315 F.2d 564 (7th Cir. 1963), *cert. denied sub nom. Illinois v. Commonwealth Edison Co.*, 375 U.S. 834 (1963); *In Re Multidistrict Vehicle Air Pollution, M. D. L. No. 31*, 481 F.2d 122 (9th Cir.), *cert. denied sub nom. Morgan v. Automobile Manufacturers Ass'n, Inc.*, ... U.S. ..... (Nov. 19, 1973) (Dkt. No. 73-394); *Mulvey v. Samuel Goldwyn Productions*, 433 F.2d 1073 (9th Cir. 1970), *cert. denied*, 402 U.S. 923 (1971); *Conference of Studio Unions v. Loew's, Inc.*, 193 F.2d 51 (9th Cir. 1951), *cert. denied*, 342 U.S. 919 (1952).) Most recently, the Court was presented with such a petition involving a decision by the Court of Appeal for the Ninth Circuit. (*In re Multidistrict Vehicle Air Pollution, M. D. L. No. 31*, 481 F.2d 122 (9th Cir.) *cert. denied Morgan v. Automobile Manufacturers Ass'n et al.*, ... U.S. ..... (Nov. 19, 1973) (Dkt. No. 73-394).) The Court has denied these petitions in almost all instances.

There is no issue presented by the petition in the present instance which has not been presented most ably many, many times in the past. In each of these prior instances, the petition has been denied. As was true of these many petitions in the past, the petition in the present instance should not be granted: No question is presented by the petition which requires or justifies disposition by this Court.

2. The Decision of the District Court and the Ninth Circuit Below Is in Complete Accord with Prior Decisions of This Court.

In holding that petitioners lacked the requisite standing to maintain an action for damages under Section 4 of the

Clayton Act, the District Court and the Ninth Circuit below acted in full and complete accord with prior decisions of this Court.

Petitioners, however, relying upon this Court's decision in *Radovich v. National Football League,* 352 U.S. 445 (1957), contend that any person who can show that he has suffered injury caused *in fact* by an antitrust violation may prosecute a claim for damages under Section 4 of the Clayton Act. *Yet, in Radovich, the plaintiff had been specifically blacklisted by the National Football League and was plainly well within the target area of, and indeed aimed at by, the unlawful conspiracy. Radovich,* therefore, offers no support for petitioners' contention. Moreover, in *Hawaii v. Standard Oil Co.,* 405 U.S. 251 (1972), this Court has made it abundantly clear that before a plaintiff may maintain an action for damages under Section 4 of the Clayton Act he must show substantially more than that he suffered direct injury *caused in fact* by an alleged violation of the antitrust laws. Thus at page 262-263, note 14, the Court stated the following:

> "The lower courts have been virtually unanimous in concluding that Congress did not intend the antitrust laws to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation." (Citing *Hoopes v. Union Oil Company,* 374 F.2d 480, 485 (9th Cir. 1967) and numerous other decisions asserting and applying the standing concept of Section 4 of the Clayton Act.)

See also *Perkins v. Standard Oil Co.,* 395 U.S. 642, 649 (1969).

The holding below that petitioners in the present instance lacked the requisite standing to maintain their alleged antitrust action for the reason that they could not have been within the area of the economy which could have been endangered with a competitive breakdown is therefore

consistent and in accordance with prior decisions of this Court.

3. The Decision of the Courts Below in Finding That Petitioners Could Not Have Been Injured "by Reason of" Anything Forbidden by the Antitrust Laws Is in Accord with Prior Decisions of the Court of Appeals for the Ninth Circuit and Are Not Inconsistent with Decisions of Other Circuits.

The decision of the courts below are in complete accord with prior decisions of the Ninth Circuit. (*E.g., In re Multidistrict Vehicle Air Pollution M.D.L. No. 31,* 481 F.2d 122 (9th Cir.), *cert. denied sub nom. Morgan v. Automobile Manufacturers Ass'n, Inc.,* ..... U.S. ..... (November 19, 1973) (Dkt. No. 73-394); *Mulvey v. Samuel Goldwyn Productions,* 433 F.2d 1073 (9th Cir. 1970), *cert. denied,* 402 U.S. 923 (1971); *Hoopes v. Union Oil Company,* 374 F.2d 480 (9th Cir. 1967); *Twentieth Century Fox Film Corp. v. Goldwyn,* 328 F.2d 190 (9th Cir. 1964), *cert. denied,* 379 U.S. 880 (1964); *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1955; *Conference of Studio Unions v. Loew's,* 193 F.2d 51 (9th Cir. 1951), *cert. denied,* 342 U.S. 919 (1952).) *Indeed, as we have previously indicated, petitioners have conceded as much by failing to petition either for a rehearing by the panel of the Ninth Circuit which rendered the decision in the present instance or for a rehearing by the Ninth Circuit en banc.*

The decision of the Ninth Circuit in *Conference of Studio Unions v. Loew's, Inc.,* 193 F.2d 51 (9th Cir. 1951), *cert. denied,* 342 U.S. 919 (1952), is dispositive of petitioners' claim. In that case, plaintiffs, employees of the defendants and members of certain unions in the motion picture industry, together with these unions, brought an action against certain major motion picture production companies ("Majors") and another union whose employees worked in the motion picture production industry. Among other

things, the complaint charged a conspiracy by the defendants to eliminate as competitors certain motion picture production companies ("Independents"). Pursuant to such conspiracy, the defendant employers allegedly discriminated in their hiring practices in favor of members of the defendant union and against the individual plaintiffs and the members of the plaintiff unions. Among other things, the Majors allegedly agreed to curtail production and distribution of motion pictures. *As a result of the alleged conspiracy, plaintiffs claimed, inter alia, that the individual plaintiffs lost wages and other employment opportunities in the motion picture industry.* The trial court granted the motion of the defendants for judgment on the pleadings. On appeal to the Court of Appeals for the Ninth Circuit, held, affirmed. In so holding, the Ninth Circuit stated the following at 548:

> "A conspiracy may have many purposes and objects; a conspiracy may perform an almost infinite variety of acts in furtherance of the conspiracy; but, in order to state a cause of action under the antitrust laws a plaintiff must show that more than one purpose of the conspiracy was a restraint of trade and that an act has been committed which harms him. *He must show that he is within the area of the economy which is endangered by a breakdown of competitive conditions in a particular industry. Otherwise, he is not injured "by reason of" of anything forbidden in the antitrust laws.* (Emphasis Added.)

The decision of the Ninth Circuit in *Conference of Studio Unions v. Lowe's, Inc.* has been reaffirmed in a string of decisions by the Ninth Circuit extending over more than twenty years. (*E.g., In re Multidistrict Vehicle Air Pollution, M.D.L. No. 31,* 481 F.2d 122 (9th Cir.), *cert. denied sub nom. Morgan v. Automobile Manufacturers Assn., Inc., et*

al., ... U.S. .... (Nov. 19, 1973) (Dkt. No. 73-394); *Hawaii v. Standard Oil of Calif.*, 431 F.2d 1282 (9th Cir. 1970), *aff'd*, 405 U.S. 251 (1972); *Mulvey v. Samuel Goldwyn Productions*, 433 F.2d 1073 (9th Cir. 1970), *cert. denied*, 402 U.S. 923 (1971); *Hoopes v. Union Oil Company of California*, 374 F.2d 480 (9th Cir. 1967); *Twentieth Century Fox Film Corporation v. Goldwyn*, 328 F.2d 190, 220 (9th Cir. 1964), *cert. denied*, 379 U.S. 880 (1964); *Karseal Corporation v. Richfield Oil Corporation*, 221 F.2d 358 (9th Cir. 1955).)

In the most recent decision of *In re Multidistrict Vehicle Air Pollution, M. D. L. No. 31, supra*, after quoting with approval from the court's opinion in *Conference of Studio Unions v. Lowe's, supra*, the court stated the following at p. 128:

> "To attain standing, a plaintiff must thus allege that the antitrust violation injured a commercial enterprise of the plaintiff in the area of the economy in which the elimination of competition occurred. Standing is denied on the other hand, if the claimant's commercial activity occurred outside the area of the economy. *Hence, the "target area" approach provides a logical and flexible tool for analyzing whether a particular claimant falls within the class of persons slated by Congress for protection under Section 4 of the Clayton Act.*" (Emphasis added)

In this action, petitioners, on information and belief have alleged that respondents and other alleged co-conspirators entered into a combination and conspiracy in interstate trade and commerce to fix prices for iceberg lettuce at an artificially high and non-competitive price. (R. 3, line 29 thru 4, line 5.) As a part of such conspiracy, respondents are alleged, again on information and belief, to have conspired to limit the total amount of iceberg lettuce produced and sold by them each year. As a result, petitioners claim

to have lost work. *Yet, petitioners do not, even on the tenuous basis of information and belief, claim that any purpose of, or means employed by, the alleged conspiracy was to reduce, fix or limit hours worked, wages paid, production costs, or employees employed.*

As the District Court observed, it was not necessary that hours worked, wages paid or production costs be reduced or limited to achieve the objective of the alleged conspiracy to fix prices. Further, it is not logical to conclude or assume that wages paid would have been reduced by such an alleged conspiracy. Had such a conspiracy been in effect, which we emphatically deny, we submit that the daily "swings" or "ups and downs" normally prevalent in the pricing structure of the fresh produce industry would have been substantially dampened or eliminated. The effect over a period of time could well have been to increase total production, particularly among the smaller producers. As a result, the number of hours and days worked by farm worker employees could have been increased. Moreover, it is obvious that any unplanted land would not have been left fallow but would have been planted to other crops, and petitioners and members of the alleged class would have been engaged in harvesting these replacement crops when not engaged in harvesting lettuce.

Applying the flexible "target area" test espoused by the Ninth Circuit[2], both the District Court and the Ninth Circuit determined that in their considered judgment petitioners could not fall within the area of the economy which could have been endangered by a breakdown of competitive conditions as a result of the alleged price fixing conspiracy and

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2. As analyzed by the Ninth Circuit in *In re Multidistrict Vehicle Air Pollution, M.D.L. No. 31, supra,* the several circuit courts have employed two somewhat different analytical techniques, with varying overtones, in seeking to determine whether a plaintiff, claiming to be entitled to damages as a result of a violation of the

therefore could not have been injured "by reason of" anything forbidden by the antitrust laws. This judgment was thoroughly considered and reviewed by the two lower courts, was fair, just and equitable, was fully consistent with prior decisions of the Ninth Circuit, and does not require or justify further review by this Court.

Moreover, the judgment of the courts below is perfectly consistent with the decisions of courts in other circuits. Indeed, it is directly analogous to the recent decision of the Second Circuit in *Calderone Enterprises Corporation v. United Artists Theatre Circuit, Inc.*, 454 F.2d 1292 (2nd Cir. 1971), *cert. denied*, 406 U.S. 932 (1972). There a landlord of motion picture theatres brought an action against certain motion picture distributors and exhibitors. The defendant exhibitors included certain lessees of the plaintiff landlord. The plaintiff alleged that the defendants had conspired to restrain trade in the distribution and exhibition of certain motion pictures. As a result of such conspiracy with the landlord's lessees, the plaintiff landlord claimed to have suffered damage by way of loss of rentals under a percentage of gross receipts clause in the respective lease agreements. As in the present instance, the trial court granted the motion of the defendants to dismiss the antitrust claims on the ground that the plaintiff did not have standing under Section 4 of the Clayton Act. On appeal to the Second Circuit, held, affirmed. In so holding, the court stated the following at 1295-6:

> "In a series of decisions over the last 15 years, *in all of which certiorari was denied by the Supreme Court*, this court has committed itself to the principle that *in order to have 'standing' to sue for treble damages*

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antitrust laws, has indeed been injured "by reason of" such an alleged violation within the meaning of Section 4 of the Clayton Act. The Ninth Circuit in its opinion describes these two tests as the "target area" and the "direct injury" approaches. (*In re Multidistrict Vehicle Air Pollution, M. D. L. No. 31, supra*, at 127, n. 7.)

under § 4 of the Clayton Act, a person must be within the "target area" of the alleged antitrust conspiracy, i.e., a person against whom the conspiracy was aimed, such as a competitor of the persons sued. Accordingly we have drawn a line excluding those who have suffered economic damage by virtue of their relationships with 'targets' or with participants in an alleged antitrust conspiracy, rather than by being 'targets' themselves. . . .

"The rationale behind the foregoing demarcation is simple, fair and reasonable. It respects the purpose of § 4 of the Clayton Act, which is to provide a private enforcement weapon that will deter violation of the federal antitrust laws by permitting any person injured in his business by reason of an antitrust violation to recover treble the damages actually suffered. It acknowledges that while many remotely situated persons may suffer damage in some degree as the result of an antitrust violation, their damage is usually much more speculative and difficult to prove than that of a competitor who is an immediate victim of the violation. *Furthermore, if the flood-gates were opened to permit treble damage suits by every creditor, stockholder, employee, subcontractor, or supplier of goods and services that might be affected, the lure of a treble recovery, implemented by the availability of the class suit as facilitated by the amendment of Rule 23 F.R.C.P., would result in an over-kill, due to an enlargement of the private weapon to a caliber far exceeding that contemplated by Congress.* . . .

"Accordingly it is necessary to use a rule of reason in construing the requirements of § 4 of the Clayton Act as to standing, just as such a rule has been adopted by courts in determining whether restraints, other than per se violations, transgress §§ 1 and 2 of the Sherman Act. [Citations omitted] A line which limits standing to those against whom the antitrust violation is directed fulfills Congress' fundamental purpose and at the same time establishes a reasonable and easily

identifiable cutoff that avoids the unfortunate consequences of opening the flood-gate to all, no matter how remote their interest or incidental their relationship. Competitors who are within the target area of an alleged antitrust conspiracy usually have more incentive than others to avail themselves of § 4. In those cases where they fail to do so, the Government may, of course, seek injunctive or punitive relief under other sections of the antitrust laws.

"Applying these established principles here, plaintiff, a non-operating landlord of a theatre leased to an exhibitor, is clearly outside of the target area of the alleged conspiracy of distributors and exhibitors, which was to restrain competition in the exhibition of motion pictures. *The alleged conspiracy was admittedly not aimed at plaintiff, but a competing distributors and exhibitors. Nor does the fact that the plaintiff's lessee was allegedly a party to the conspiracy materially distinguish this case from those where standing has been denied to one having a similar relationship to an innocent competitor victimized by a conspiracy, . . . If the plaintiff is not within the 'target area', then it is legally immaterial whether the person through whom the plaintiff derives his injury was a member of the conspiracy or was innocent of any wrongdoing. A plaintiff not a target of any antitrust violation does not become a target by virtue of the culpability of its lessee, patentee, franchisee, supplier, customer, or debtor.*" (Emphasis Added)

(See also, *Snow Crest Beverages, Inc. v. Recipe Foods, Inc.*, 147 F.Supp. 907 (D.Mass. 1956) (Supplier of beverage ingredient lacked standing to sue for acts directed against the bottler to whom the plaintiff sold almost its entire output); *SCM Corporation v. Radio Corporation of America*, 407 F.2d 166 (2d Cir. 1969), *cert. denied*, 395 U.S. 943 (1968), *reh. denied*, 396 U.S. 869 (1969); *Rossi v. McCloskey and Company*, 149 F.Supp. 638, 640 (E.D.Pa. 1957) (Em-

ployees lacked standing to sue their employer who had conspired with others to monopolize business.); *South Carolina Council of Milk Producers, Inc. v. Newton,* 360 F.2d 414, 418, 420 (4th Cir. 1966), *cert. denied,* 385 U.S. 934 (1966); *Centanni v. T. Smith & Son, Inc.,* 216 F.Supp. 330, 338 (E.D.La. 1963) affirmed 323 F.2d 363 (5th Cir. 1963) (Employees lack standing.); *Nationwide Auto Appraiser Service v. Association of C. & S. Co.,* 382 F.2d 925, 927 (10th Cir. 1967) (cited with approval by the Court in *Hawaii v. Standard Oil, supra* at fn. 14). See also cases cited at pp. 5-6, *supra.*)

The decisions relied upon by petitioners are inapposite and not controlling in the present instance. In *Roseland v. Phister Mfg. Co.,* 125 F.2d 417 (7th Cir. 1942), and in *Vines v. General Outdoor Advertising Co.,* 171 F.2d 487 (2nd Cir. 1948), plaintiffs were both commission salesmen who had allegedly been driven out of a former market by having their accounts transferred to competitors pursuant to alleged unlawful territorial allocation conspiracies. Similarly, in *Dailey v. Quality School Plan, Inc.,* 380 F.2d 484 (5th Cir. 1967), the plaintiff was a commissioned salesman who was confronted with reduction in the size of his territory and ultimately termination of his employment as a result of an unlawful merger. In each instance, the salesman, *as an integral part of such unlawful combination and conspiracy and as an agreed means or objective of the conspiracy,* was forceably prevented from engaging in business in a territory which he had developed over many years, and was literally driven out. In each instance the courts of appeal held that the salesman had been injured in his "business or property" and that he was entitled to recover damages arising in fact from the alleged unlawful acts. Plainly, each plaintiff not only fell within the target area; each plaintiff was the target itself and directly aimed

at by the unlawful combination and conspiracy. Such decisions are not, as petitioners contend, at variance with the judgment of the courts below in the present instance.

Finally, the decision of the District Court in *Wilson v. Ringsby Truck Lines, Inc.*, 320 F.Supp. 699 (D.Colo. 1970), relied upon by petitioners, is contrary to the decision of the 10th Circuit in *Nationwide Auto Appraiser Service, supra,* with which the District Court openly expressed disapproval and was expressly disapproved by the Tenth Circuit in *Reibert v. Atlantic Richfield Co.*, 471 F.2d 727 at 733 (10th Cir.), *cert. denied,* 411 U.S. 938, *rehg. denied,* 412 U.S. 914 and 945 (1973).

CONCLUSION

This matter has been thoroughly briefed and argued before two lower courts. It has been carefully weighed and considered by these two courts. Each of these courts concluded that petitioners could not have been within the "target area," the area of the economy endangered with a competitive breakdown as a result of the alleged price fixing conspiracy; they therefore could not have been damaged "by reason of" such conspiracy within the meaning of Section 4 of the Clayton Act. Such conclusion is fully consistent with prior decisions and policy statements of this Court. It is in complete accord with a chain of decisions developed by the Court of Appeals for the Ninth Circuit over a number of years and which have been previously submitted to this Court for review. And it is consistent with decisions reached by other circuits in analogous instances. For the reasons therefor set forth herein,

we respectfully urge that the writ of certiorari prayed for should not issue.

Respectfully submitted,

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